

h

Notice of Allowability	Application No.	Applicant(s)	
	09/733,857	MILES ET AL.	
	Examiner	Art Unit	
	ALEX NOGUEROLA	1753	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 02/24/2004.
2. ☒ The allowed claim(s) is/are 1-6.
3. ☒ The drawings filed on 08 December 2000 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).

7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ | 7. <input type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

Alex Noguerola
Primary Examiner
Art Unit: 1753

Art Unit: 1753

Allowable Subject Matter

1. Claims 1-6 are allowed.

2. The following is an examiner's statement of reasons for allowance: the examiner does not agree with applicant that McBride et al. does not disclose a DC power supply, however, the examiner does agree with applicant that it would not have been obvious to substitute the interdigitated electrodes of Becker et al. or Bakewell et al. for the series of individual electrodes of McBride et al.

For the embodiment shown in Figure 5 McBride et al. discloses that the electrodes **201** may be used for traditional electrophoresis (col. 4, ll. 57-62). One with ordinary skill in the art at the time of the invention would have understood "traditional electrophoresis" to mean electrophoresis using a DC electric field and thus a DC power source. Thus, McBride et al. discloses a DC power source within the four corners of the patent. The discussion of Figure 4 discloses that electrodes **16A** and **16B**, which provide all or substantial part of the field that moves the molecules, are to be used for electrophoresis and implies these *two end electrodes* are electrically separate from the internal electrodes **1** (col. 3, ll. 47-55). Upon viewing Figure 4 and reading the associated description one with ordinary skill in the art would have understood that electrodes **1** are at least intended for traditional electrophoresis; that is, electrophoresis using a DC power source.

Where the examiner agrees with applicant, though, is that by substituting the interdigitated electrodes of Becker et al. or Bakewell et al. for the series of individual electrodes

Art Unit: 1753

of McBride et al. the device of McBride et al. would not be able to function as intended. As applicant has pointed out, a traveling wave field as taught by McBride et al. could not be created with interdigitated electrodes having projecting legs. Also, McBride et al. use the series of individual electrodes for affecting the relative movement of molecules, while Becker et al. or Bakewell et al. use their electrodes to trap molecules or cells.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALEX NOGUEROLA whose telephone number is (571) 272-1343. The examiner can normally be reached on M-F 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, NAM NGUYEN can be reached on (571) 272-1342. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1753

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Alex Noguerola
Primary Examiner
AU 1753
May 4, 2004